

# **CONSERVATION EASEMENTS FLEXIBLE TOOLS FOR BATTLEFIELD PRESERVATION**

*Produced by: The Military Heritage Project  
Palmetto Conservation Foundation*

As the country's treasured open spaces and cultural sites disappear, we are faced with a choice of how to protect what we treasure in our communities while also meeting timber, agricultural and economic needs. A healthy balance can be achieved by using various conservation tools to protect natural and historic resources for the community while at the same time maintaining the goals and objectives of the landowner. Conservation easements are cooperative tools that allow the preservation and protection of our quality of life while upholding a tradition of local control and private ownership.

America's battlefields are prime opportunities for protection through the use of conservation easements. The flexible nature of easements works well with the various goals of battlefield preservation. Easements can be a good fit for battlefield preservation if the landowner 1) wants to continue to own and manage the land, 2) is willing to restrict certain rights, such as the right to large-scale development, for himself and all future owners and 3) has a need for potentially significant tax deductions and credits. Like battlefields, no two easements are alike.

## **WHAT IS A CONSERVATION EASEMENT?**

A conservation easement is a legal agreement between a landowner and a qualified conservation organization or government agency. It permanently limits a property's uses in order to protect its conservation values. A landowner "owns" not only the land but also many rights associated with it, including the right to harvest timber, build structures and grow crops. By donating a conservation easement to a land trust or government agency, some rights are permanently relinquished while others are maintained. For example, the right to build additional residences could be donated, while retaining the right to grow crops. Future owners will also be bound by the easement's terms.

Conservation easements are used to protect a wide variety of lands, including farms, forests, historic areas, ranches, wildlife habitats, and scenic views. They are drafted in a detailed legal document that outlines the rights and restrictions on the owner's use of the property and the responsibilities of the landowner and the land trust or government agency that holds the easement.

An important fact to note about easements is that they are not contracts or agreements. An easement is a transfer of property interest. The rights the landowner gives away are owned by the Grantee organization. Certain stipulations will arise once these rights are donated to a non-profit organization.

## **AVANTAGES OF CONSERVATION EASEMENTS**

Used correctly, conservation easements offer landowners a number of advantages:

- They leave the property in the ownership of the landowner, who may continue to live on it and manage it as he always has, sell it, or pass it on to heirs.
- They can significantly lower estate taxes, which may help heirs keep land in the family rather than have to sell it. An easement lowers the taxable value of the property, thus lowering the value of the estate, possibly below the estate tax threshold.
- Easements can provide the landowner with income tax and, in many cases, property tax benefits. These tax savings are explained in a later section.
- They are flexible and can be written to meet the particular needs of a landowner while protecting the property's resources. For example, a landowner may agree to restrict commercial development in order to protect a gun emplacement and decide not to allow public access.
- Easements are permanent, remaining in force when the land changes hands. As one landowner put it, "you can control your land from the grave." In order to meet the Internal Revenue Service rules for a tax deduction (see below), a conservation easement must be agreed to "in perpetuity." This way a conservation easement follows the deed to the land. When sold or passed on to heirs, the restrictions stay in place for all future landowners. A land trust or government agency, as possible grantee organizations, ensures the restrictions are followed.

## **THE CONSERVATION EASEMENT PROCESS: THINGS TO CONSIDER**

Negotiating, drafting and executing a conservation easement can be a tricky and confusing process when one considers the complexities of property and tax law combined with financial management and landowner goals. Some things need to be clarified upfront.

### **Who is the Receiving Organization or "Grantee"?**

The group receiving the conservation easement, the Grantee, must be a qualified conservation organization. "Qualified" means that it has received tax-exempt status from the United States Internal Revenue Service and has a "Determination Letter" stating this fact. The letter gives donors confidence that they will receive a deduction for the value of the easement they donate to the group. Other factors a donor may consider when choosing an organization to hold the easement include the group's public positions, board membership and how well it is managed.

A tax deduction can also be received for an easement donated to a government agency. This may be a good alternative for certain properties; especially where specialized management of projected

heavy public use is expected. Some landowners have problems working with government agencies for various reasons so the non-profit sector often remains the best alternative.

Once an easement is negotiated, signed and recorded with the deed, the grantee organization is responsible for monitoring the property (now and in the future – no matter who owns it) to make sure all restrictions in the legal document are upheld. This is normally a once per year monitoring, but the organization reserves the right to visit more often if it is necessary. If any violations are found, it is the responsibility of the organization to enforce the terms of the agreement – taking legal action if necessary.

### **Hire Professionals**

Because the conservation easement document is a legally binding document, the landowner should consult a *legal advisor*. A *tax advisor* is valuable for assessing a landowner's tax situation to determine the benefit of tax deductions and credits. A *certified appraiser* will also be required to determine the value of the conservation easement.

### **What are the Tax Advantages?**

Because the donation of a conservation easement also has the public benefit of protecting our military heritage, open space, and protection of natural resources, a federal and frequently a state income tax deduction is available. A general overview on income tax deductions and credits follows.

***Federal income tax deduction:*** The donation of a conservation easement that meets certain requirements of the tax code can qualify as a tax-deductible gift. These requirements include a provision that the easement must be donated in perpetuity; “term” easements, which are put in place for a set number of years, do not qualify. It must be donated to a qualified charitable organization such as a land trust or a government agency that has the commitment and resources to enforce the easement. The easement must be donated exclusively for conservation purposes, defined in the tax code as accomplishing at least one of the following:

- The preservation of land areas for outdoor recreation by, or the education of, the general public.
- The protection of relatively natural habitat for fish, wildlife, plants, or similar ecosystems.
- The preservation of open space (including farmland and forest land) where such preservation will yield a significant public benefit and is either 1) for the scenic enjoyment of the general public, or 2) pursuant to a clearly delineated federal, state, or local governmental conservation policy.
- The preservation of a historically important land area or certified historic structure.

In essence, the income tax deduction is reserved for the protection of conservation resources that truly provide significant public benefit. However, an easement does not have to cover all of the property, preclude all use or development, or necessarily allow public access in order to qualify for a charitable deduction.

For income tax purposes, the value of the easement is the difference between the value of the land with the easement and its value without the easement, both of which are determined by an appraisal. For example, an unrestricted property is worth \$500,000 on the open market to a developer who would subdivide it and build several houses. The landowner donates an easement on the land that precludes further development. The fair market value of the land, without its development potential, drops to \$200,000. The value of the donation is considered to be \$300,000. (There are limitations on how much a taxpayer can deduct). In general, the highest easement values arise from very restrictive conservation easements on tracts of developable open space in areas where development pressures are intense.

A tax deduction is valuable to those landowners who have high income and can use a break from taxes. Under federal law up to 30% of a person's income can be deducted each year. If the value of the easement is high, few landowners who are not wealthy will be able to use the full deduction. For that reason, the charitable deduction may be taken over six years until the full value of the contribution is used up.

***State Income Tax Deduction and Tax Credit:*** Just like the federal income tax deduction, a donation of a qualifying easement entitles a landowner to a deduction from state taxable income. The guidelines for the state should follow that of the federal law. Again, a certified appraiser must determine the value of the land with the easement and its value without the easement.

Additionally, some states provide further incentives. In South Carolina for example, the Conservation Incentives Act provides a tax credit of 25% of the value of the easement, in addition to the income tax deduction.

***Reduction of Estate Tax:*** The federal estate tax is based on the fair market value, not on the land's original purchase price or on its current use. Often families find that they must sell all or part of the land for development in order to pay the estate tax. By putting a conservation easement on the land restricting future development, its fair market value will, in most cases, be reduced. When the owner dies, estate taxes – based on the value of the land with its development potential restricted, will be reduced.

***Reduction of Local Property Taxes:*** The tax assessment on an easement-restricted property logically should reflect the land's lowered value after imposition of the easement; therefore a reduction in local property taxes should follow.

## **EXAMPLE: AN EASEMENT ON THE LAIR OF THE SWAMP FOX**

A good example of battlefield protection through conservation easements is one held by Palmetto Conservation Foundation for the protection of South Carolina's famed Revolutionary War site, Snow Island. This remote island in Florence County is the site most identified with Francis Marion, a hero of the American Revolution. Marion's guerilla warfare tactics earned him the nickname "The Swamp Fox".

Viewers who saw the Mel Gibson movie, "The Patriot," a loosely crafted Hollywood version of the Francis Marion story, will recognize Snow Island as the swampy place where Gibson's character retreated with his men to hide out from British forces. Marion used Snow Island as his base of operations from December 1780 to March 1781 as he eluded British forces. After the Battle of Cowpens, Loyalist leaders invaded Snow Island and the Patriots were driven off. Before retreating, the Patriots threw all of Marion's arms into Lynches Creek and Marion never used Snow Island again. The guerilla nature of Marion's activities around Snow Island gives it a central position in South Carolina lore.

The South Carolina industrial giant Sonoco, a major packaging and timber products company, purchased the property in 1960 to use for hardwood farming and harvesting. Over the years Sonoco has taken great pride in owning this slice of South Carolina history. The company allowed and even funded several attempts by the South Carolina Department of Archeology to uncover evidence of Marion's camp. Sonoco restricted access to the site to protect archeological resources and it has limited its own activities to the production of timber. In a time of great uncertainty in the timber products industry, the idea of a public company giving away such a valuable resource was not in the realm of possibility.

The protection of Snow Island began to take shape when Peter Browning, President and Chief Operating Officer of Sonoco, joined the board of Palmetto Conservation Foundation. Browning had developed a great respect for the natural beauty and history of the Palmetto State and was open to new ways of preserving those qualities for others to enjoy.

The answer was a conservation easement on 70 acres of Snow Island signed in February of 2002. The easement protects the site against inappropriate uses such as commercial or industrial development. Sonoco received a tax deduction and maintains private ownership with all rights and duties of ownership, except the right to alter the area covered by the easement. Sonoco has also maintained a policy of making Snow Island available for tours and further archeological investigation, all while continuing to use the site for the production of hardwood timber. Palmetto Conservation conducts an annual inspection of the site to ensure the provisions of the easement are being followed.

Sonoco experienced a wave of positive publicity for protecting this unique piece of South Carolina's history. Photographs of the property and Sonoco Company officials covered the front pages of major southeastern newspapers as people gravitated to the idea that a timber products company could simultaneously harvest trees and conserve natural and historic resources. "The conservation easement got us off the business pages and onto the front pages," Browning said.

## **A MODEL CONSERVATION EASEMENT**

Preparing a model anything can be a risky undertaking. A conservation easement for battlefield protection is no exception.

There are many factors to consider when preparing an easement for a landowner. First, what are the features of the property that need to be preserved? Can these features be preserved by merely limiting development, or is protecting the property an all or nothing proposition. Is public access to the property important or is simply protecting the battlefield from inappropriate development acceptable? What if the landowner wants to sell tickets for tours of the property?

Further investigation may shed light on how management of the land will play into the protection of property shielded from development. If it is a working farm, the owner will have to make changes to allow for cultivation and harvesting of crops. Consider for a moment that a farm that grew cotton during the Civil War now is to be planted in sunflowers. While the new agriculture saves the land from development, sunflowers are not cotton and the appearance and character of the battlefield will be different.

The following model battlefield easement is designed as a base structure for someone who is beginning to formulate a strategy for the conservation of a particular parcel of historic property. It contains the best legal requirements that easements used across the United States employ. It also sets up a decision making process for how to approach a particular battlefield.

Certain assumptions about the property in the model easement were made. The hypothetical property in the easement is a working farm, with the owner living in a dwelling on the property. The owner is interested in continuing agriculture and timber operations. The battlefield takes up a significant portion of the property. The goal is to continue the traditional uses of the property, while protecting the vital aspects of the battlefield. While public access is expected, there are not plans for large-scale tourist operations. The fictional grantee in this case is a private, not for profit organization.

### **A Note of Caution**

The following easement is a model, suggesting broad techniques for battlefield preservation. While you are welcome to use this model as a guide, please consult local legal counsel prior to executing an easement on your property or accepting an easement for your organization.

**MODEL EASEMENT ONLY:** *The legal requirements of an easement and the needs of a property owner will change from situation to situation. For this reason, please consult local legal counsel prior to executing this easement. Different states may have different format required by law or local practice. Follow the usage in your state.*

## CONSERVATION EASEMENT

STATE OF \*\*\*\*\*

\_\_\_\_\_(date)\_\_\_\_\_

) DEED OF CONSERVATION

COUNTY OF \*\*\*\*\*

) EASEMENT

THIS DEED OF EASEMENT, MADE THIS \_\_\_\_ DAY OF \_\_\_\_\_, 200\*\* BETWEEN  
(*Legal Name of the Property Owner*), AS GRANTOR AND PARTY OF THE FIRST PART, AND  
(*legal name of the organization acquiring easement*), A (*State*) NON-PROFIT CORPORATION,  
AS GRANTEE AND PARTY OF THE SECOND PART.

### WITNESSETH:

**NOTE:** *This section is important as it details the reasons the Battlefield is worthy of protection and correspondingly, why the property owner is entitled to a tax deduction for granting the conservation easement.*

WHEREAS, Grantor is the Owner in fee simple of certain real property in (*insert County, State*)  
consisting of (*insert acreage*) hereinafter, the "Property"); and

WHEREAS, the Property contains and is near or adjacent to the Site of the Battle of (*insert name of battle*) (referred to hereinafter as the "Battlefield"), which has been recognized as historically significant by the United States Department of the Interior through inclusion in the National Register

of Historic Places, and/or which has been designated as a state historic site by the (*insert State*) State Historic Preservation Officer and/or which has been recognized as significant by the (*Insert County Historical Society*) through designation as a historic site; and

*NOTE: An official designation as a historic site by the federal, state or local government will ensure the battlefield is a valid historic site worthy of preservation and will support the owner's tax deduction.*

WHEREAS, the Property itself and/or its environs are significant in American, (*insert State county and city*) history and culture, and possess physical and environmental features that contribute significantly to the historic and cultural integrity of the interpretation of (*insert era*) history and the visual beauty of the area, and, therefore, are worthy of being preserved; and

WHEREAS, the property is subject to development and land speculation pressure; and

WHEREAS, The Grantor presently employs the aforesaid property in practices which are not inconsistent with conservation goals;

WHEREAS, Grantee is a publicly supported, tax-exempt, (*insert state*) nonprofit organization qualified under Sections 501(c)(3) and 170(h)(3) of the Internal Revenue Code, and is organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for federal income tax exemptions by reason of attempting to influence legislation, and which does not participate in, or intervene in any political campaign on behalf of any candidate for public office; and

*NOTE: The Grantee, the organization receiving the easement, must have a valid determination letter from the U.S. Internal Revenue Service stating it is a 501(C)(3) public charity. A governmental agency could also be the receiving organization, but would not need the IRS determination. Whether a particular public agency*



*may hold an easement will be defined in local and state law. Normally, organizations that have preservation or conservation missions, and sometimes tourism related agencies have experience with easements.*

WHEREAS, by Act of the Legislature of the State of South Carolina, as recorded in South Carolina Code Ann. (1976, as amended) Section 27-8-10, et. seq. (the South Carolina Conservation Easement Act of 1991) the State of South Carolina specifically authorizes the creation and conveyance of conservation easements, and by Section 27-9-10, et. seq., recognizes and authorizes qualified organizations, such as the Grantee to hold conservation easements; and

**NOTE:** *Each state will have authorizing legislation or legal authority allowing the granting of conservation easements. Here we have cited the South Carolina Statute.*

WHEREAS, Grantor desires to grant, and Grantee desires to accept a preservation and scenic easement (this "Conservation Easement") over the Property, the purpose of which is to preserve the historic integrity of the Battle of (*insert Name of Battle*) Site and environs, provide opportunities for interpretation of the Battlefield and to screen the view from the Battlefield of improvements and changes in land use not consistent with the historic integrity of the Battlefield;

NOW, THEREFORE, in consideration of the sum of One and 00/100 Dollars (\$1.00), in hand, paid by Grantee to Grantor, and in consideration of the recitals and agreements contained herein, Grantor does hereby grant, sell, and convey to Grantee, its legal successors and assigns, as permitted herein, a conservation easement, in perpetuity, in, on, and over the Property and the right to restrict the use thereof as provided herein below, said Property being more particularly described as:

**NOTE:** *Insert legal description of Property or if particularly long include as Attachment A.*

Grantor covenants on behalf of himself, his heirs, successors, and assigns as set forth below. A sketch map and photographs of the Property, which is the subject of this Conservation Easement, showing the existing improvements and the trees, shrubs or other vegetation of environmental significance, and elements of the property with historical or scenic significance shall be kept on file with the Grantee with an appropriate inscription and with the initials of the Grantor and an agent of the Grantee. It is the intent of the parties that these maps and photographs shall constitute a convenient record of the present state of the Property referred to in this Deed of Conservation Easement, as of the date of this Deed of Conservation Easement, and shall be used as the primary evidence of the Property' present state in enforcing the term of this Deed of Conservation Easement; provided, however, that the nonexistence or unavailability of these maps and photographs shall not preclude or prevent a future determination of the present state by any other means for evidence thereof.

***NOTE:*** *The baseline assessment is the record of property, as it exists at the time the easement is executed. It will be the model all future changes or inspections are measured against. More information on the baseline is included in the following section.*

Grantor hereby grants the following covenants and restrictions in perpetuity and to be included verbatim in any subsequent conveyance of the interest of the Grantor, his heirs, successors and assigns in the Property, although failure to so include verbatim shall not impair the easement:

***NOTE:*** *This section states the easement is in perpetuity and its provisions pass with the title to each subsequent owner. While most easement statutes affirm this, there is a dislike for tying up land in perpetuity in the common law. Making the easement “in perpetuity”, meaning it lasts forever, is necessary for the property owner to qualify for federal tax deductions.*

## 1. PURPOSE

It is the dominant purpose of this Easement to preserve and protect in perpetuity the historic, natural, ecological, open space and scenic features of the Property so that the historic landscape can be commemorated and interpreted and to enable visitors to the Battlefield to view it as nearly as practical, without obstruction or impediment. In doing so, it is the purpose of this easement to foster the continuation of traditional uses and practices presently employed or likely to be employed. The restrictions included herein are intended to prevent uses of the Property, which if allowed to occur, would have as their individual or cumulative effect an adverse impact on the scenic and historic values of the Battlefield.

## 2. LAND USE

The property will be used for single family residential, forestry, agricultural, conservation, and educational purposes only. No commercial, multi-family or industrial activities shall be permitted on the property, except that which is stated hereunder. Conservation and educational purposes include trails, roads, historic markers and interpretive features, visitor facilities, and wildlife and natural feature restoration, in keeping with the scale and character of the battlefield, as approved by the grantee.

***NOTE:** The land use section usually presents a problem of definitions. For example, is a large-scale pig farm an agricultural or industrial use? Is charging for tours of the battlefield a commercial use? Terms should be defined based on local practice, often found later in the document. Since this is a model, a catchall feature is included that requires the approval of the Grantee for construction of visitors centers. Visitor facilities sound like a friendly useful term, but left unchecked can be truly disruptive to the preservation of the battlefield.*

## 3. AFFIRMATIVE RIGHTS CONVEYED TO GRANTEE

Grantor hereby conveys the following affirmative rights to the Grantee:

***NOTE:** The Affirmative Rights spell out what the Grantee organization can do as easement holder.*

- A. Right of Visual Access To have visual access to, and view of, the Property in a natural, scenic, open and undisturbed condition, provided that such right shall not be construed to permit general public access over or upon the Property.
- B. Right to Prevent Inconsistent Uses To prevent Grantor, all subsequent owners, or third parties from conducting any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and not permitted hereunder;

**NOTE:** *The right to prevent uses inconsistent with the purposes of the easement or activities prohibited by the easement is the basic right of the easement holder.*

- C. Right to Identify and Protect The right of the grantee to identify, to preserve, and protect in perpetuity the historic, natural, ecological, open space, and aesthetic features of the Property, including the right, if in the opinion of the grantee it is appropriate, to maintain boundary markers, monuments, and interpretive signage to permit identification of the Battlefield.

**NOTE:** *If there is to be any educational or interpretive use made of the battlefield, the right to maintain and control this use is a key to proper use of the battlefield. This right is given to the grantee because the sensitivity of the battlefield resources may suggest limiting their identification to the public.*

- D. Right to A Battlefield Unobstructed and Untainted To preserve the Battlefield in a state as approximate as possible to its historic condition at the time of the [Battle] free of any inconsistent use of the Property.
- D. Right to Archeological Investigations To carry out archeological investigations on the Property. No archeological remains or objects of historical value shall be disturbed by the Grantee and all remains of archeological or historical value found on the Property

shall remain the property of the Grantor, unless protected by law. If Grantor does not wish to retain possession of the objects, they will be turned over to the Grantee or its designee. The Grantee shall be notified immediately by the Grantor of any archeological or historical findings at any time under any circumstances. Upon discovery of such objects, the Grantor will suspend activities or operations so as to cause no further disturbance, pending investigation by the Grantee.

**NOTE:** *Archeology on a battlefield is a basic tool for understanding the significance of the events that occurred there. It is crucial to have the rules for conducting investigations and for ownership and care of artifacts spelled out in the document. Later owners may not appreciate archeology or archeologists as much as the current owner may and the rules, if not specified, could change drastically for the worst. It may be wise to have a professional archeologists review the ongoing investigations to determine if current best practices are being followed. The grantor or grantor may wish to expand this right to include other types of investigations such as military historians or others researching battles. Appropriate language would then need to be inserted.*

E. Right to Monitor To enter upon the Property in a reasonable manner and at reasonable times in order to monitor compliance with the Easement and to further document natural features on the Property. The Grantee shall give at least two (2) weeks notice prior to entry and shall limit entry to annual visits (after completion of the Baseline Documentation) unless the Grantee has reason to believe there is a violation, or prospective violation, of the terms of this Easement. Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;

**NOTE:** *As discussed in the next chapter, proper stewardship of an easement requires annual monitoring. The easement should spell out the basic and minimum requirements for monitoring. Hopefully the Grantee will have additional access to the battlefield. The annual monitoring visit is a technical requirement to ensure the terms of the easement are being followed, but doesn't necessarily have to be the total access. Side agreements, rights of access, leases or gentlemen agreements can allow much more complete access between the landowner and organization.*

G. Right to Enforce Easement To enforce the covenants herein below by proceedings at law or equity; provided that no person other than Grantor or Grantee shall have the right to bring any such proceedings.

**Note:** *The easement is a document between the Grantor and Grantee who have the right to enforce the terms. However, some easements give a third party right, a group not party to the easement, of enforcement to a regulatory, professional or simply larger organization that has the resources to force compliance. In some battlefield easements this third party right of enforcement will rest with the State Historic Preservation Officer.*

*Given that artifacts or other archeological remnants are of such importance, the right of enforcement might be expanded to give the grantee expanded rights concerning stopping inappropriate disposal of such artifacts. It might be advisable to give this right to a third party.*

H. Right to Require Restoration To require Grantor, all subsequent owners, or third persons to restore such areas, wildlife habitat or features of the Property that may be damaged by any uses prohibited by this Conservation Easement or any activity or use inconsistent with the purposes of this Conservation Easement; and

**NOTE:** *If a violation of the easement occurs, the organization holding the easement will probably want the problem fixed if possible, rather than monetary damages. Unfortunately this remedy is available on few occasions.*

I. Right of Discretionary Consent If, owing to unforeseen circumstances, any of the activities prohibited under this Easement are deemed desirable by both the Grantor and the Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to such limitations as it deems necessary or desirable and provided further:

- (1) The activities will not adversely affect the qualification of this Easement as a “qualified conservation easement” under any applicable laws.
- (2) The activities will not adversely affect the “tax exempt” status of the Grantee under any applicable laws.

- (3) In no case shall the Grantee or Grantor have the right or power to agree to any activities that would result in the termination of this Easement.

**NOTE:** *In the real world, land management and conservation requires flexibility by both parties.*

#### 4. PROHIBITED ACTIVITIES AND USES

Unless otherwise set forth in the Reserved Rights (delineated under Paragraph 6 below), Grantor will not perform or permit the following acts or uses on, over or under the Property:

- A. Subdivision The Property is currently comprised of one parcel, which is all contained on one tax map. Subdivision of the Property, recording of a subdivision plan, partition of the Property, or any other attempt to divide the Property into two or more legal parcels is prohibited.

**NOTE:** *Keeping the property together, in one parcel, can be crucial to maintaining its integrity. The inability to subdivide the property accomplishes this. This right may require much negotiation with the landowner as the ability to generate income from a property often requires subdivision. Often flexibility along with careful drafting of the easement and proper review of where structures can be built can allow the owner to meet his goals while protecting the battlefield.*

- B. No New Residential Housing There shall be no new residential dwellings or appurtenances such as garages and sheds built on the Property.

**NOTE:** *This model assumes a single family home already exists on the property. Removing the right for new houses will be a major concession donated by the landowner. The negotiations can become much trickier when dealing with ancillary uses like garages and tool sheds. On one hand, a homeowner needs these types of facilities. On the other, left unfettered, the exception can swallow the whole. If the landowner insists on maintaining the right for ancillary uses, Grantee organization should insist on having approval of the placement of the building. Sometimes the house sites are approved prior to executing the easement, particularly when there are significant resources that could be damaged by construction.*

- C. Commercial Uses There shall be no commercial uses, activities or structures on the Property. No right of passage across or upon the Property shall be allowed or granted if that right of passage is used in conjunction with any commercial uses or activities

prohibited by this Easement. The construction or operation of golf courses or ranges, commercial airstrips, or commercial helicopter pads is specifically prohibited, without limiting the generality of the foregoing. The offering of educational tours for a fee focusing on conservation, preservation and outdoor recreation aspects of the Property shall not be considered a commercial activity, provided that all improvements to manage such use, and on-site advertisements for such use, shall meet the requirements of this conservation easement.

**NOTE:** *This is a location where proper definitions are required. Keeping Zippy Marts off the property is easy. The challenge arises when confronted with activated associated with the interpretation of the battlefield. Is it considered a commercial use for the landowner to offer public tours of the battlefield for a small fee?*

D. Industrial Uses There shall be no industrial uses, activities, or structures on the Property.

No right of passage across or upon the Property shall be allowed or granted if that right of passage is used in conjunction with any industrial uses or activities prohibited by this Easement.

**NOTE:** *This is a location where proper definitions are required. Is a hog farm an agricultural or industrial use? Be careful of the exception that swallows the rule.*

E. Communications Facilities and Structures There shall be no construction or placement of

temporary or permanent buildings, shelters, cellular towers, transmission or receiving antennas or towers, utility transmission poles, or any other structures on the Property.

There shall be no satellite dishes, unless placed immediately adjacent to a permitted residence for the sole use of residents of a permitted residential dwelling.

**NOTE:** *The vast sums now available to land owners for allowing communications towers on their properties make this restriction problematic. If it is impossible to totally restrict such uses, be careful to ensure control over placement and to insist on buffering requirements that mitigate the disturbance to the historic view shed.*



F. Paved Roads All new paved or similar non-porous surface roads are prohibited.

**NOTE:** *Pavement is neither historically accurate nor environmentally sensitive. If a project requires large scale paving it is probably inappropriate for a battlefield.*

G. Signs There shall be no construction or placement of any signs, including, but not limited to, advertising signs, billboards, or other advertising materials on the Property. Interpretive signs under the provisions of section 3.C may be allowed upon permission of the Grantee.

**NOTE:** *Billboards and the like will not do physical harm to the battlefield, but may destroy its scenic appeal. Care should also be given to potential archeological damage by construction of signs.*

H. Mining, Excavating There shall be no exploration, mining, excavating, extracting, dredging or removing from the Property of soil, loam, peat, gravel, sand, rock, other mineral resource, or hydrocarbons.

**NOTE:** *Mining can destroy the scenic and archeological integrity of the battlefield and should only be allowed when there is no alternative. The value of the resource can make it hard for a landowner to walk away from a large financial offer.*

H. Underground Storage Tanks There shall be no installation of underground storage tanks, other than septic tanks and underground-liquefied petroleum (LP) gas storage tanks to serve the permitted residential dwellings on the Property.

**NOTE:** *The prohibition against underground storage tanks could be loosened as long as protection for archeological resources is enforced.*

I. Refuse There shall be no placing, filling, storing or dumping on the Property of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other substance not generated on the Property, nor any use of the Property as a sanitary landfill.

**NOTE:** *Trash and debris may not physically harm the battlefield, but will destroy the scenic appeal.*

- J. Topography and Hydrology There shall be no uses of the Property that would materially and adversely alter the topography, hydrology, water systems, wetlands, or wildlife habitat on the Property.

**NOTE:** *Understanding topography and hydrology can be key to understanding the battle, in addition to scenic and environmental concerns.*

- L. Artifacts and Archeology The removal of artifacts or ecofacts (plant remains such as carbonized seeds, or pollen,) from surface or subsurface contexts, including, but not limited to, arrowheads, pottery shards, bottles, beads, brick, tabby, metal objects (such as buttons, buckles, ordnance, insignia etc.), marine and freshwater shell, charcoal, bone tools, and antler artifacts shall be prohibited, except such activities as are (a) approved by the State Historic Preservation Office and (b) performed pursuant to the criteria set forth by the Secretary of the Interior "Guidelines and Standards for Archaeology and Historic Preservation." There shall be no disturbance to any earthworks.

Metal detecting is not permitted on the Property unless supervised by a professional archaeologist, with written permission from the State Historic Preservation Office. The archaeologist must meet or exceed the Standards of the Secretary of the Interior and act pursuant to the criteria set in these Standards for Archaeological Investigations.

**NOTE:** *Battlefields are attractive targets for relic hunters and metal detector enthusiasts. Once removed from the battlefield, archeological resources lose much of their value for interpretation. Even the best-intentioned archeologists can set back the cause of interpretation, so it is best that all research be done by professionals and done according to established standards.*

- M. Invasive, Nuisance and Exotic Species There shall be no introduction of invasive plant or nuisance animal species. There shall be no introduction of exotic species without the Grantee's prior written consent, except those plant species traditionally or prevalently used for wildlife management or ornamental landscaping in the surrounding region at the time of the grant of this Easement.
- N. Hazardous or Radioactive Waste No hazardous or radioactive waste shall be placed, stored, dumped, buried, or permitted to remain on the Property.
- O. Development Rights Except as otherwise reserved to the Grantor in this Easement, all development rights appurtenant to the Property are released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

**NOTE:** *The interplay between local land use regulations and easements can be tricky. Generally it is best to keep the two separate, especially when considering that many landowners are choosing an easement because of a lack of faith in local zoning controls. But remembering that an easement is a transfer in a right of property, the landowner cannot use the portion under easement in a sophisticated development rights transfer or other land use control technique. They no longer maintain the right to conduct most activities on the land and therefore cannot barter them away.*

- P. Adverse or Inconsistent Uses There shall be no other use of the Property or any activity, which is inconsistent with the purposes of the Conservation Easement that would threaten or impair significant conservation interests unless such use is necessary for the protection of the conservation values that are the subject of this Easement.

**NOTE:** *This is a general purpose catch all prohibiting any activity not in keeping with battlefield preservation.*

## 5. RESERVED RIGHTS

Notwithstanding any provision to the contrary contained in this Easement, Grantor reserves to himself, and to his personal representative, heirs, successors, and assigns, the following rights, uses and activities (collectively, the “Reserved Rights”). All Reserved Rights enumerated in this Paragraph shall apply to the Property in its entirety. The exercise of all Reserved Rights shall be in full accordance with all applicable local, state and federal laws and regulations, as well as in accordance with the purposes of this Conservation Easement. Unless otherwise specifically limited herein, it is not necessary for the Grantor to notify or seek the permission of the Grantee with respect to the exercise of the Reserved Rights.

**NOTE:** *This model is written from the perspective that the entire property is subject to each term of the easement, which in some circumstances may not be the case. Under this scenario, the Grantor may engage in the following activities as a matter of right.*

A. Allowed Activities The right to engage in all activities or uses not expressly prohibited by governmental statute or regulation, not expressly prohibited herein, and not inconsistent with the purposes of this Conservation Easement.

B. Recreation and Educational Uses The right to engage in any minimum impact outdoor recreational and educational uses and activities, including, but not limited to fishing, hunting, recreational shooting, hiking, swimming, wildlife observation, canoeing, kayaking, boating, bird-watching, photography, equestrian use, tours, outdoor classes or other activities that are not disruptive to the natural environment, do not impair the historic or scenic values of the Property and are in compliance with all applicable federal, state and local statutes and regulations.

In this regard, Grantor has traditionally made the property available to the public on a limited basis for educational and recreational use, including organized tours, classes, historic activities and outdoor celebrations. Grantor reserves the right to continue to

make the Property available for such uses. However, nothing contained herein requires the Grantor to continue such practices, and the Grantor reserves the right to discontinue, on a permanent or temporary basis, making the Property available for such uses.

**NOTE:** Care should be taken to limit the definition of any activity allowed in this broad grant that is inconsistent with the particular circumstances of the battlefield. For example, if public access is allowed and expected, hunting may not be an advisable activity

C. New Agricultural Structures & Improvements New buildings and other structures and improvements to be used primarily for agricultural purposes (including the processing or sale of farm products predominantly grown or raised by the Property, but not including any dwelling or farm labor housing) may be built only with the permission of the Grantee.

**NOTE:** If the property is a working farm, it may be unreasonable to expect no new agricultural structures. The permission of the grantee is required to keep the exception from swallowing the rule. Many easements use a provision identifying an area where structures are allowed and limitations are restricted. In case of a working farm, this is often referred to as a farmstead area.

D. Existing Structures and Improvements Grantor may undertake to maintain, repair or replace structures or other improvements existing at the time of execution of this easement on the Property to include:

(1) Fences - Existing fences may be repaired and replaced.

(2) Agricultural Structures & Improvements - Existing agricultural structures and improvements may be repaired and replaced at their current size at their current locations.

(3) Existing Single-Family Residential Dwellings - All existing single-family residential dwellings together with reasonable appurtenances such as garages and sheds may be repaired, reasonably enlarged and replaced at their current locations.

(4) Roads - Existing Roads may be repaired and replaced at their current size at their current locations.

**Note:** *If existing structures are historic and/or were present at the time of the battle, alterations to them should be subject to the Secretary of the Interiors Standards for Treatment of Historic Properties.*

## 6. PROCEDURE TO CONSTRUCT NEW BUILDINGS OR IMPROVEMENTS

The intent and goal of this Conservation Easement is to maintain and preserve the historic integrity of the Battlefield and scenic beauty of the Battlefield experience. The following activities are allowed only with the permission of the Grantee. Grantor shall inform the Grantee in writing not less than sixty days prior to undertaking any improvement allowed in the Property. Grantee shall only allow those activities that do not interfere with the scenic or historic integrity of the Battlefield.

A. Fences New fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife. Any fencing constructed through the Property shall not significantly interfere with the scenic value of the Property and shall be either low enough or open enough to permit free access of wildlife to and from the Property.

**NOTE:** *Practicality vs. integrity is the question. A working farm requires fences, but barbed wire was not around during the American Revolution.*

B. Roads New roads of dirt, gravel, shell or similar non-paved surface may be constructed only for ingress and egress to the Property or to adjacent property, or for the harvesting

or cultivation of agricultural or timber products to include such culvert, pipe, or other equipment as might be necessary for proper maintenance and drainage thereof.

**NOTE:** *Again, practicality vs. integrity is the question. Roads may be necessary, but where and what type remains to be determined.*

C. Mailboxes and Signs The following signs and mailboxes may be allowed with the permission of the Grantee:

- (1) One wood and/or metal mailbox of standard size, design and color for each family unit in residence at any time upon the Property.
- (2) One wood and/or metal sign for each family unit in residence at any time upon the Property and not to exceed two (2) square feet of front surface size per residential sign. No sign shall contain or be constructed with "built-in" or "interior" lighting, being lighting emanating from the interior of such sign.
- (3) One "For Sale" or "For Rent" sign pertaining to the Property or any portion thereof, not to exceed four (4) square feet per sign.
- (4) Markers indicating or explaining the historic significance of the Property.

**NOTE:** *These decisions will be driven by the layout and use of the property.*

C. Utilities Such underground or overhead telephone, electric, gas, television cable and other utility lines, pipes or wires, may be allowed only as may be necessary to provide service to any residence or other structure upon or to be built upon the Property. Grantee shall only allow such improvements if studies indicate that neither the scenic view nor any archeological resources shall be damaged by their construction or existence.

**NOTE:** Again, practicality vs. integrity is the question. Utilities may be necessary, but where and what type remains to be determined. It would better in most cases to deny utility access, especially above ground. However, no utilities will severely curtail the economic value of the property and the landowner may not agree. In most states, utilities have the authority to condemn for access and could break the easement this way. A negotiated settlement is always better.



7. VEGETATION, FORESTRY AND AGRICULTURE:

The intent and goal of this Conservation Easement is to maintain and to preserve the historic integrity of the Battlefield and scenic beauty of the Battlefield experience.

- A. Vegetation No trees, shrubs or other vegetation shall be removed from the Property without the prior written consent of Grantee; provided, that the Grantor shall have authority to remove dead or damaged trees and shrubs and to perform other equal maintenance of the Property, to maintain the Property in its general state as of the date of the Conservation Easement. In construing any duty under state or local law to remove dead, diseased or downed trees from the public right-of-way, it is understood that Grantee has no such duty.
- B. Forestry Grantor may harvest timber for commercial purposes, provided that any such harvesting is conducted pursuant to a forest management plan prepared by a registered forest and approved by the Grantee for sensitivity to the scenic and historic integrity of the Battlefield. This forest management plan shall include a section on protection of archeological resources and in no case shall activities or practices potentially harmful to architectural resources be employed. Forestry purposes include the exercise of good and accepted forestry practices normally occurring in a forested setting in the immediate area and to include Best Management Practice as specified by the (*insert state*) Forestry Commission.

**NOTE:** A working farm will likely harvest timber and it should be able to be conducted without harming the property. But see the following note below.

- C. Agriculture All agricultural operations on the Property shall be conducted in a manner consistent with a conservation plan prepared by the U.S. Department of Agriculture,

Natural Resources Conservation Service, or its successor, or by a qualified conservation professional approved by Grantee. This conservation plan shall include a section on the protection of archeological resources, prepared by a competent professional in the cultural resources field, and in no case shall activities or practices potentially harmful to archeological resources be employed. Grantor and Grantee shall approval this plan. As far as is economically or environmentally feasible, all effort shall be made to have the agricultural activities used in the plan be as close to those employed at the time of the [Battle] as possible. This plan shall be updated periodically, and in any event any time the basic type of agricultural operation on the Property is changed or ownership of the Property changes. All agricultural operations shall be conducted in accordance with applicable law.

**NOTE:** *A working farm will intend to harvest timber and crops and it should be able to be conducted without harming the property. Most conservation easements include language concerning these activities being conducted according to a plan prepared by professionals. The difference with an easement for a battlefield is that the plan should consider the scenic, historic and archeological integrity of the battlefield. For example, if a grove of trees provided a key element to the battle, their preservation and longevity are essential to the property. The plan should reflect their sensitivity.*

## 8. MANAGEMENT

Grantor shall perform all management of the Property and nothing herein obligates in any way the expenditure of Grantee's funds for upkeep or general maintenance of the property.

**NOTE:** *The general rule of conservation easements is that the Grantee assumes no management responsibility for the property. With a battlefield easement, this could be different as the Grantee could assume responsibility for interpretation or archeology.*

9. EXTINGUISHMENT

- A. Right to Proceeds. If circumstances arise in the future which render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by state law at the time, in accordance with paragraph (B) below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this Conservation Easement.

**NOTE:** *In most states, private conservation easements can be condemned or extinguished by a court of law for a variety of reasons dealing with a change of circumstances that created the need for the easement.*

- B. Value of Interest. This Conservation Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of this Section 9, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Conservation Easement at the time of the signing hereof to the value of the Property, without deduction for the value of the Conservation Easement, at the time of such signing. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to

Section 170(h) of the Internal Revenue Code of 1954, as amended. For the purposes of this provision, the ratio of the value of the Conservation Easement to the value of the Property unencumbered by the Conservation Easement shall remain constant.

**NOTE:** *This provision is often controversial to the landowner but the Internal Revenue Service requires it in order for the donor to claim a tax deduction.*

10. EASEMENT IN PERPETUITY

This Conservation Easement shall be in perpetuity and shall survive any termination of Grantee's existence. In the event of such termination of Grantee's existence or in the event it ceases to be an organization qualified under Internal Revenue Code Sections 501(c)(3) and 170(h)(3), the successor grantee to the Grantee named herein shall be, and the rights of Grantee under this instrument then shall be for the benefit of and may be exercised by, (*insert group*), provided it is then an organization qualifying under Internal Revenue Code Sections 501(c)(3) and 170(h)(3), and accepts designation as successor to the rights of the Grantee hereunder, or, if not, then so qualifying or so accepting designation as successor to the Grantee, another organization then designated by the State Historic Preservation Office which then so qualifies exclusively for the purposes of protecting the historic and scenic qualities of the Property.

**NOTE:** *For the donation to qualify for federal tax deductions the easement must be in perpetuity. Since perpetuity is long time there is a chance the Grantee organization may not be around at some point in the future. This provision allows for the naming of a "backup" organization to hold the easement, or if that fails, for the SHPO to designate an organization.*

11. SUBSEQUENT CONVEYANCE:

Grantor hereby expressly agrees to include verbatim the terms, conditions, restrictions and purposes of this Conservation Easement in any subsequent conveyance of the Property; and Grantor further

recognizes that the terms of this agreement shall be enforceable by Grantee and its successors against any person or entity then the owner of the Property and any other person claiming an interest in or to the Property.

**NOTE:** *The easement and its restrictions are enforceable against all subsequent owners of the property.*

12. TRANSFER BY GRANTEE

Neither Grantee nor its successors and assigns shall transfer the Conservation Easement hereby conveyed without the prior written consent of the Grantor or successor owner of the Property.

**NOTE:** *It is sometimes acceptable for an easement to be assignable to another organization. This is usually a decision for the Grantor or property owner to make because their comfort level with the original Grantee of an organization is a prime factor for granting the easement.*

13. REPRESENTATION OF TITLE.

Grantor represents and warrants that he owns valid, fee simple absolute title to the Property and has the right to grant and convey this Conservation Easement and that any and all mortgages on the property have been subordinated to this Conservation Easement.

**NOTE:** *This provision indicates that the landowner has clear title to the property and has the legal ability to grant the easement, including that which is mortgaged.*

14. ENFORCEMENT FOR BENEFIT OF PUBLIC

This easement, as described above, is given for the purpose of preserving the historic and cultural aspects and visual beauty of the Battlefield for the benefit of the public. Grantee covenants for itself, its successors and assigns, that it shall continue to enforce all grants and other easements of a similar

nature on or in the vicinity of the Battlefield conveyed to it prior to, subsequently or concurrently herewith.

15. NO PUBLIC ACCESS

Although this preservation and scenic easement will benefit the public in ways recited above, nothing herein shall be construed to convey a right to the public for access or use of the Property by the public, and Grantee, its successors and assigns shall convey no such right, and the Grantor, her heirs, successors and assigns, shall retain exclusive right to access and use, subject only to the provisions herein recited.

***NOTE:** This is the easement provision that worries every landowner. It is a common misconception that an easement mandates public access. In reality, that is merely one way to meet the public benefit test for federal tax deductions. Since the easement is preserving a historic site, it is probably going to meet the test anyway. But, the Grantee organization may be interested in public access. This can be done with a separate agreement.*

*Much of the discussion over whether to allow public access involves qualifying the easement for a federal tax deduction for granting the easement. In addition to public access, this qualification test may also be met by protecting sensitive ecological resources, promoting a governmental open space plan or, as is the case with most battlefields, protecting recognized historic sites.*

16. MODIFICATION

This Conservation Easement may not be modified or amended except pursuant to a written agreement signed by both parties. Any such modification or amendment shall be consistent with the purposes of this Conservation Easement.

17. SEVERABILITY

Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

18. NOTICE

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To Grantee:

TO HAVE AND TO HOLD, ALL AND SINGULAR, THIS GRANT OF CONSERVATION EASEMENT OVER SAID PROPERTY, UNTO SAID GRANTEE, ITS SUCCESSORS AND ASSIGNS, FOR HISTORIC AND SCENIC PRESERVATION, FOREVER.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal this \_\_\_\_ day of \_\_\_\_\_, 20\*\*.

Signed, Sealed and Delivered

In the Presence of:

GRANTOR:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

GRANTEE:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **THE BASELINE ASSESSMENT AND MONITORING**

By executing an easement a property owner is agreeing to keep the land in a certain condition, generally the state it is in at the time of execution. By accepting the easement, the Grantee organization agrees to enforce the provisions of the easement. Both parties have responsibilities.

To begin the enforcement process the parties must agree to the condition of the property at the time of the easement's execution. This document is referred to as the Baseline Documentation. Through narrative, maps and photographs it gives an accurate indication of the current condition of the property.

The forms that follow are commonly used to prepare the Baseline information. Both parties should sign off on the forms and accompanying documentation. Each party and a neutral third party should receive copies.

Normally the easement will be monitored annually. As the date for the monitoring visit approaches the landowner should be mailed a letter advising him of the date and asking if the landowner chooses to accompany the monitors.

During the visit the monitors should be careful to compare the baseline documents with the easement provisions. Changes to the property should be noted, former picture points re-photographed and any violations noted. Upon the conclusion of the visit the landowner should be notified of the results of the visit and if any violations have occurred that require mediation.



## Conservation Easement Baseline Data Checklist

### 1. Photos

- \_\_\_\_\_ Aerial photos with boundaries delineated. Indicate date of photo, if copy.
- \_\_\_\_\_ On-site photos (3.5" x 5", color) signed and numbered and description of photo points mapped

**Note:** *A copy of aerial photography can usually be obtained from the Federal Natural Resources Conservation Service or related state agency at a relatively low cost. A copy will suffice.*

Elements of conserved land photographed and mapped:

- \_\_\_\_\_ Battle Features
- \_\_\_\_\_ farmland
- \_\_\_\_\_ critical habitat/natural features
- \_\_\_\_\_ prominent scenic features
- \_\_\_\_\_ vegetative buffer areas
- \_\_\_\_\_ corner of property from which documentation began and monitoring would logically start
- \_\_\_\_\_ existing improvements (structures, roads, utilities, wells)
- \_\_\_\_\_ site(s) of proposed improvements (see abstract for reserved rights)
- \_\_\_\_\_ wetlands, ponds and streams
- \_\_\_\_\_ evidence of wildlife, rare flora
- \_\_\_\_\_ easily identified photo of property from main road

**NOTE:** *These are examples of what needs to be included in the baseline. Use your best judgment on what should be protected in the easement and make sure that is included in the baseline.*

### 2. Maps

- \_\_\_\_\_ Locator map with directions to property
- \_\_\_\_\_ Base Map (Topographic) with boundaries delineated. Above areas (Section 1) should be identified along with the following:
  - \_\_\_\_\_ forested areas
  - \_\_\_\_\_ physical evidence of boundaries (walls, fences, etc.)
  - \_\_\_\_\_ public access (trails, other)
  - \_\_\_\_\_ amount of land conserved.
- \_\_\_\_\_ Survey of property with current abutters identified
- \_\_\_\_\_ Survey of areas with existing improvements excluded from restrictions and sites of proposed improvements including structures, rights of way, septic systems
- \_\_\_\_\_ Forest management plan map, if applicable
- \_\_\_\_\_ County tax map with current abutters identified. Obtain abutters' addresses as well

### **3. Farmland**

\_\_\_\_\_ Brief description of current uses, i.e., wheat, tobacco, corn, dairy, etc.

\_\_\_\_\_ Copy of Soil Conservation Service Conservation Plan, if available

### **4. Forestland**

\_\_\_\_\_ Copy of most current forest management plan if forestry is occurring or is planned

### **5. Natural Areas**

\_\_\_\_\_ Description of important habitat, riparian areas, wetlands, geologic features, scenic vistas and any specific recommendations for their long-term management and protection

\_\_\_\_\_ Sites specifically identified by Fish and Wildlife Department or Natural Heritage Program which contain rare/endangered/threatened species of flora or fauna

### **6. Historic Properties**

\_\_\_\_\_ Description of all archeological investigations including reports, pictures of discoveries, etc.

\_\_\_\_\_ Interpretive Plans and tourism programs.

\_\_\_\_\_ Plans for restoration, stabilization and rehabilitation.

### **7. Limited Development**

\_\_\_\_\_ Specify type and amount of development allowed pursuant to conservation easement

\_\_\_\_\_ Note date when development is to begin and attach correspondence with landowner outlining particulars of development and pre-development review process

## BASELINE DATA FORM

### Date of conservation easement:

#### 1. PROPERTY NAME: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_

Acres: \_\_\_\_\_

Determined by:

\_\_\_\_\_ Survey

\_\_\_\_\_ Estimate

\_\_\_\_\_ Tax map

\_\_\_\_\_ Other: \_\_\_\_\_

Landowner(s): \_\_\_\_\_

Owner's Address:

Phone:

Other contacts: \_\_\_\_\_

#### 2. TITLE INFORMATION:

Deed: Book # \_\_\_\_\_ Page # \_\_\_\_\_

\_\_\_\_\_ Well-defined description

\_\_\_\_\_ Title work necessary

\_\_\_\_\_ Known encumbrances: \_\_\_\_\_

#### 3. ATTACHMENTS:

\_\_\_\_\_ Topo maps

\_\_\_\_\_ Type map (soils map)

\_\_\_\_\_ Photographs

\_\_\_\_\_ Survey Map

\_\_\_\_\_ Other Maps

\_\_\_\_\_ Other

#### 4. GENERAL PROPERTY INFORMATION:

Land/Water Types occurring on property. Note approximate % acres of total for each type.

\_\_\_\_\_ Forest (operable)

\_\_\_\_\_ Pasture

\_\_\_\_\_ Forest (inoperable)

\_\_\_\_\_ Natural Pond/Lake

\_\_\_\_\_ Tree Farm

\_\_\_\_\_ Man-Made Pond/Lake

\_\_\_\_\_ Field

\_\_\_\_\_ Stream/River

\_\_\_\_\_ Cultivated

\_\_\_\_\_ Swamp/Bog/Marsh

\_\_\_\_\_ Ledge/Rock formations

\_\_\_\_\_ Other \_\_\_\_\_

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\_\_\_\_\_ Yes                      \_\_\_\_\_ No

\_\_\_\_\_ feet/miles frontage on \_\_\_\_\_ pond  
 \_\_\_\_\_ lake  
 \_\_\_\_\_ river

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

\_\_\_\_\_ well-defined                      \_\_\_\_\_ not defined  
\_\_\_\_\_ able to be located                \_\_\_\_\_ surveyed  
\_\_\_\_\_ need improvement

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Wildlife: (list species or groups of species likely to be found given habitat conditions – note rare or endangered)

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Unique/Outstanding wildlife/plants, aquatic, geologic, scenic, or other physical features/historical, archaeological or cultural significance

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Property listed as a natural area, scenic, or historic landmark by a local, state or federal agency or non-profit organization? \_\_\_\_ Yes \_\_\_\_ No

If yes, describe listings: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 5. BUILDING INFORMATION

List buildings on property (type, size, condition): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe trails, wells, power lines, pipelines, etc. and include historical use if appropriate: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 6. FOREST & AGRICULTURE INFORMATION

**NOTE:** Many large landowners will have forestry information available. If forestry survey or appraisal information is available, include that information with this baseline. If not, ask a forester to visit the property with you during the baseline.

### A. FOREST RESOURCE INFORMATION (rank good to poor)

Site Productivity \_\_\_\_\_

Relative tree quality \_\_\_\_\_

Relative stocking \_\_\_\_\_

### B. GENERAL FORESTRY INFORMATION:

1. Is the area part of a larger similar area under protection or needing protection?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, please describe: \_\_\_\_\_  
\_\_\_\_\_

2. Do unproductive portions of the land contain features or qualities that may enhance other objectives? \_\_\_\_\_

3. Does the land contain stands that are in productive condition/can be put into productive condition with reasonable cost within a reasonable time? \_\_\_\_\_  
\_\_\_\_\_

4. Does the land offer potential for demonstration of forest management techniques? \_\_\_\_\_  
\_\_\_\_\_

### C. TYPES (hardwood, pine, mixed, etc.)

Tree species: \_\_\_\_\_

Approximate acres: \_\_\_\_\_

Age class: \_\_\_\_\_

Total volume: \_\_\_\_\_

Tree Species: \_\_\_\_\_

Approximate acres: \_\_\_\_\_

Age class: \_\_\_\_\_

Total volume: \_\_\_\_\_

Tree Species: \_\_\_\_\_

Approximate acres: \_\_\_\_\_

Age class: \_\_\_\_\_

Total volume: \_\_\_\_\_

Tree Species: \_\_\_\_\_

Approximate acres: \_\_\_\_\_

Age class: \_\_\_\_\_

Total volume: \_\_\_\_\_

#### A. AGRICULTURAL RESOURCE INFORMATION

Is the land currently being farmed? \_\_\_\_\_

Current/potential crops: \_\_\_\_\_

#### 7. VALUE/TAX STATUS; ACQUISITION COSTS

Tax Identification Numbers: \_\_\_\_\_

Assessed Value: \_\_\_\_\_

Annual Taxes: \_\_\_\_\_

Appraised Value: \_\_\_\_\_

Date of Appraisal: \_\_\_\_\_

#### 8. ANTICIPATED ANNUAL COSTS

**NOTE:** The primary cost to the grantee is the monitoring requirement. The organization should consider what has to be done to ensure an annual inspection and what cost are associated with an easement violation. An appropriate stewardship contribution should be negotiated with the landowner prior to final execution of the easement.

Monitoring: \_\_\_\_\_

Volunteer Assistance: \_\_\_\_\_

**9. EDUCATION AND PUBLIC USE**

A. What are the land's prime educational features? (marshlands, wetlands, etc.)

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B. What are the land's prime public use/recreation features? (lake frontage, hiking, scenic vistas, etc.)

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C. List any educational facilities or activities that are consistent with the property, the donor's interests, organizational objectives, and the potential of the land:

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D. Hiking \_\_\_\_\_ Fishing \_\_\_\_\_ Hunting \_\_\_\_\_  
Camping \_\_\_\_\_ Picnic Area \_\_\_\_\_ Boating \_\_\_\_\_  
Other: \_\_\_\_\_

E. Potential Education Partners:

**10. ADDITIONAL INFORMATION.** Include any information you deem relevant to this survey not included above.

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# Land Monitoring Report

**NOTE:** Following the annual inspection of an easement, the land trust or other organization should use this or a similar form to record the results of the visit. The report and a letter to the Grantor should follow. The letter should indicate if the inspection revealed no problems, if violations have occurred and the procedure the land owner should take for correcting violations and communicating with the land trust.

Name of property:

Current owner:

Date of last monitoring report:

Date of this monitoring report:

Representative(s):

Did the property owner accompany the representative? \_\_\_\_\_ Yes \_\_\_\_\_ No

If representative, Name \_\_\_\_\_ Tel. \_\_\_\_\_  
Address \_\_\_\_\_

Check any of the following that are currently in practice:

_____ agriculture (farming, etc.)	_____ aquaculture
_____ commercial (concessions, etc.)	_____ fishing
_____ forestry (harvesting, reforestation, etc.)	_____ hunting
_____ recreational	_____ wildlife/habitat mgmt.
_____ residential (permanent residences, trailers)	_____ other:

1. Are all boundaries and key points clearly marked and easement marking signs present?  
☐ Yes ☐ No If no, explain:
  
2. List acts or uses permitted by the easement (see abstract) that have taken place since the last monitoring report.
  
3. List acts or uses prohibited by the easement (see abstract) that have taken place since the last monitoring report.
  
4. Have any of the following activities occurred on the premises since the last monitoring visit? If so, describe location and activities below, explain how it affects the easement, document location on base map and with photographs.
 

A.	Removal of sand, gravel, loam, rock, peat, etc.	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
B.	Trash accumulation, dumping, organic debris.	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
C.	Obstruction of wetlands	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
D.	Natural alterations (e.g. storm damage, erosion, etc)	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
E.	Construction of roads, parking lots, utility lines, etc	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
F.	Removal of trees or other vegetation	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
G.	Planting of trees or other vegetation	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
H.	Other:				
  
5. Have any new structures, improvements or man-made alterations been added since last visit (include swimming pools, woodland management, etc.)? ☐ Yes ☐ No  
 If yes, describe structure and purpose, area, date of construction, locate on baseline map, and attach photographs.

6. Picture point tour and inspection: Take a tour of the property by personally inspecting each picture point on the property base map. Note any changes and record below.

Photograph #

Comments

7. Adjacent land use:

A. What is the current land use of adjacent properties?

B. Are there any problems associated with the premises (encroachment, trespassing, municipal regulations, etc.)? If yes, explain.

8. Recommended actions (if any):

9. Time spent on property: \_\_\_\_\_

Signature of Monitor(s): \_\_\_\_\_  
\_\_\_\_\_

Please return this form, attachments, and log book to Land Trust office when monitoring task is completed.

For Office Use Only:

Current owner information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

1. If new owner(s), date when organization reviewed easement with them:
2. Date landowner invited to accompany monitor:
3. Date landowner sent letter and monitoring results:
4. Is property management consistent with the terms of the easement? \_\_\_\_\_ Yes \_\_\_\_\_ No
5. Cite any specific monitoring procedures recommended for this property (water quality reports, soil studies, etc.)
6. Based on information in this report, what is the recommended interval for monitoring this property?
7. List the expenses associated with this monitoring report.

Hours: \_\_\_\_\_

Travel: \_\_\_\_\_

Phone: \_\_\_\_\_

Other: \_\_\_\_\_

TOTAL expenses: \_\_\_\_\_

8. Compare with baseline data.
9. Summary comments:

### **Easement Monitoring Checklist**

- \_\_\_\_\_ Owner notified of site visit by phone and/or letter. (Date: \_\_\_\_\_)
- \_\_\_\_\_ Abstract obtained
- \_\_\_\_\_ Current ownership checked at Tax office and Clerk's office. If any changes, current tax map and deed obtained.
- \_\_\_\_\_ Easement provisions reviewed prior to site visit.
- \_\_\_\_\_ In the field, baseline photo stations located, compared to current status, and noted in monitoring log (new photos taken if necessary).
- \_\_\_\_\_ Monitoring log completed after site visit.
- \_\_\_\_\_ Letter sent to owner acknowledging site visit and providing comments and/or recommendations on any required measures.
- \_\_\_\_\_ Follow-up site visit conducted within six months to check compliance with recommendations/requirements.

\_\_\_\_\_  
Signature of Monitor

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

## **Site Visit and Easement Monitoring Procedures Checklist**

Preparation:

- \_\_\_\_\_ Send letter two to four weeks prior to anniversary of previous monitoring visit (registered mail and return-receipt-requested, if required by easement)
- \_\_\_\_\_ Check current ownership at Tax office.
- \_\_\_\_\_ Enlarge USGS topo map to scale of tax map and plat property lines on topo.
- \_\_\_\_\_ Schedule visit, and call owner to confirm within a week of visit.

**BRING:**

- \_\_\_\_\_ Camera and film
- \_\_\_\_\_ Topographic map with property lines
- \_\_\_\_\_ Aerial photograph
- \_\_\_\_\_ Copy of tax map for reference to surrounding parcels.
- \_\_\_\_\_ Survey map (if available)
- \_\_\_\_\_ Land monitoring report
- \_\_\_\_\_ Abstract
- \_\_\_\_\_ Easement monitoring checklist

**Return to ORGANIZATION office:**

- \_\_\_\_\_ Baseline topographic map with changes, problem areas and/or photograph locations
- \_\_\_\_\_ Photographs taken at all previous photo locations and at new locations as needed. Should be signed by the photographer and keyed to photo points on a map (S&Pp14-21).
- \_\_\_\_\_ Land monitoring report
- \_\_\_\_\_ Abstract
- \_\_\_\_\_ Easement monitoring checklist
- \_\_\_\_\_ Equipment